**HIGH COURT OF UTTARANCHAL AT NAINIAL**

**Writ Petition No. 4049 (M/S) of 2001**
**(Old No. 5886/80)**

Om Prakash (since deceased) represented through
Its L.R.
1/1 Shyam Lal S/o Om Prakash.
2. Puttan Lal S/o Parasadi Lal.
Both residents of Mohalla Talla Daniya,
Almora. .....Petitioner.

**Vs**

1. District Judge, Almora.
2. Bishan Datt, S/o Bachi Ram.
3/1.Smt. Kamla Joshi W/o Late Sri Hira Ballabh.
3/2 Sri. Manohar Joshi S/o Late Sri Hira Ballabh.
3/3 Sri. Manish Joshi S/o Late Sri Hira Ballabh.
3/4 Km. Kalpana Joshi D/o Late Sri Hira Ballabh.
3/5 Km. Bhawana Joshi D/o Late Sri Hira Ballabh.
3/6 Km. Shoba Joshi D/o Late Sri Hira Ballabh.
All residents of Tyunora Mohalla,
District –Almora. ..... Respondents

Sri K.N. Joshi learned counsel for the petitioners.
Sri Nand Prasad, learned Standing counsel for respondent No. 1 and 2.

Dated:-30-3-2006

**Hon'ble B.S. Verma, J.**

Heard Sri K.N. Joshi leaned counsel for the petitioners and Sri Nand Prasad learned Standing Counsel for the respondent No. 1 and 2.

The present writ petition has been filed by the petitioners to issue a writ, order or direction in the nature of certiorari quashing the order of the respondent No. 1, District-Judge, Almora dated 2-4-1980, the order of the Prescribed Authority, Civil Judge, Almora, dated 7-8-1979.

Brief facts of the case are that the landlords/petitioners had applied for the release of the disputed premises in question whose upper portion of the building is residential one and the lower portion is non-residential portion, on the ground that their family has increased and he is the need of non-residential portion for his son who has grown up and he has to be engaged in some business.

The application for release was contested by the tenants opposite party, on the ground that the landlord has already a very big house consisting of sixteen rooms which is more then sufficient for their residential purposes and they have also sufficient accommodation for fixing their son in the business in the lower portion of that house. The Prescribed Authority has allowed the objection of he tenants and dismissed the application of the landlords. Aggrieved by the order of the Prescribed Authority, the landlord-petitioners have preferred Rent control appeal before District-Judge. It was argued by the petitioners that the Prescribed Authority had committed an error in giving a finding that the landlords have a house of sixteen rooms in the ground floor which are vacant, therefore, the accommodation is not sufficient because of the increase in the family members. The tenant opposite party has contended before the District Judge, that the earlier application for permission for eviction which was contested up to the revisionsal stage before the Divisional Commissioners, local inspections were made who found sixteen rooms in that house. It was further argued before the District Judge that the disputed house was purchased by the petitioners and their cousin Kanhaiya Lal in the year 1965. Kanhaiya Lal has transferred his interest in premises in question in favour of the present appellants in the year 1976. Therefore, it was submitted on behalf of the respondents that as opposed to the increase in the family it has now decreased because Kanhaiya Lal has separated and taken his residence elsewhere and the arguments of the respondents has been accepted by the appellate court and the learned District Judge has given a categorical finding there is enough residential accommodation with the appellant. Learned District Judge has also considered the comparative need of he landlords as well as tenant and found that the petitioners/appellants had two Municipal “Phars” in addition to the two rooms at the ground floor of the residential house. For further extension of the business, the sufficient accommodation is available for the petitionesr-appellants and on the point of hardship also the leaned District Judge has observed that the petitioners-appellants are more prosperous business man than the tenant opposite party, hence, they can manage for some other suitable accommodation which is not possible for the

tenant because he is a small shop keeper and agreed with the findings of the Prescribed Authority that more hardship be caused to the tenant in comparison to the landlords.

The next point raised by the tenant respondent that Kanhaiya Lal transferred his interest in the property in the year 1976 and the petitioners have filed the release application within a period of three years which is not permissible under the Act and it will amount breaking up the tenancy which is also not permissible under the law.

The prescribed Authority had held that the application for release is not maintainable in view of the Section 21 (1) (b) of the proviso of Act 13 of 1972, on the ground that the Kanhaiya Lal executed a sale deed of this one third share of the disputed accommodation on 13-9-1976 in favour of the applicants and the application for release was moved on 19-9-1978, obviously the present application was moved within a period less than three years and the learned Prescribed Authority has also held that there is nothing on record to show that the petitioners- appellants had issued any notice expressing their intention of moving the present application for release under Section 21 (1) of Act 13 of 1972. In view of these infirmities, the application was clearly falls within restriction prescribed by Section 21 (1) First Proviso to Clause 'B' and was also held by the Prescribed Authority that in view of that there considering of question and accommodation available with the appellant, there is no bonafide need of the applications/ petitioners for the disputed accommodation does not arise abinitio and both the questions bonafide need and comparative hardship have been considered by the Prescribed Authority as well as by the appellate court.

It is well settled in writ jurisdiction that the court cannot re-appreciate the evidence and it is the finding of fact that the accommodation available fort the petitioner is sufficient for extending their business. He cannot be seen in the writ jurisdiction while by the court's below had given the finding in this regard.

The learned Prescribed Authority has rightly held that the application could not be moved by the petitioner before the expiry of the period of three

years has been provided under Section 21 (b) Proviso 2 of the Act and the application was premature and rightly been rejected.

I do not find any manifest error of law has been committed by the Prescribed Authority as well as the Appellate Court and there is no Perversity in the orders impugned. The writ petition is devoid of merit.

The writ petition is dismissed. No order as to cost.

**(B.S. Verma, J)**

Dated: -30-3-2006

M.K.